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d/b/a Glidewell Laboratories
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC. dba GLIDEWELL
13 LABORATORIES, a California
corporation,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC., a
17 California corporation

18 Defendant.

Case No. SACV11-01309-DOC(ANx)

**JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.'S STATEMENT
OF OBJECTIONS TO EVIDENCE
SUBMITTED IN SUPPORT OF
KEATING'S OPPOSITIONS TO
GLIDEWELL'S MOTIONS FOR
SUMMARY JUDGMENT**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

19
20 AND RELATED
21 COUNTERCLAIMS.

Plaintiff and counter-defendant James R. Glidewell Dental Ceramics, Inc., doing business as Glidewell Laboratories (“Glidewell”) hereby objects to the following evidence presented by defendant and counter-claimant Keating Dental Arts, Inc. (“Keating”) in support of its oppositions to Glidewell’s motions for summary judgment set for hearing on December 17, 2012 before this Court:

I. LEGAL DISCUSSION

To avoid repetition, we incorporate the discussion of the admissibility of website printouts and Keating’s genericness evidence from Glidewell’s Statement of Objections to Evidence Submitted in Support of Keating’s Motions for Summary Judgment [Dkt. 115] (“Objections [Dkt. 115]”) herein by reference.

II. OBJECTIONS

A. Declaration of David Jankowski iso Keating’s Motions for Summary Judgment

Exhibit	Objection
4	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. FRE 901. The deposition transcript is not properly authenticated. No signature page is attached and the copy of the transcript is not a certified copy.
5	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. FRE 901. The deposition transcript is not properly authenticated. No

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	signature page is attached and the copy of the transcript is not a certified copy.
6	<p>This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on.</p> <p>FRE 901. The deposition transcript is not properly authenticated. No signature page is attached and the copy of the transcript is not a certified copy.</p>
7	<p>FRE 401, 402, 403. With respect to Keating's Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that "The usages of the ® symbol in Exhibits 70-72 were inadvertent...." because there were additional examples. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. With respect to Keating's Response to SUF 19 (Dkt. 126), this exhibit a collection of emails, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 2-4 (Dkt. 126), this exhibit is a collection of emails; this evidence does not establish that Glidewell "widely used" the ® symbol in its email blasts to customers.</p>
15	FRE 901. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
16	FRE 901. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
17	FRE 901. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.

Exhibit	Objection
27	FRE 401, 402, 403. This document has no tendency to indicate the pronunciation of the term “Brux.”
28	FRE 401, 402, 403. This document has no tendency to indicate the pronunciation of the term “Z-Brux.”
31	FRE 401, 402, 403. This document has no tendency to indicate the pronunciation marks that sound similar to BruxZir, as the mark used in the exhibit is Glidewell’s BruxZir mark.
37	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (<i>See</i> section I(A), Objections [Dkt. 115]).</p>
38	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (<i>See</i> section I(A), Objections [Dkt. 115]).</p>
39	FRE 401, 402, 403, 802, 901. This document has no tendency to show

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	<p>how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged website. (<i>See</i> section I(A), Objections [Dkt. 115]).</p>
42	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he has personal knowledge of the contents of the alleged forms. (<i>See</i> section I(A), Objections [Dkt. 115]).</p>
43	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]). Further objection on the basis that the term “Zirconia crown” is not used as a mark, and this website does not indicate the pronunciation of the term “zirconia crown.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Jankowski does not testify that he</p>

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	has personal knowledge of the contents of the alleged forms. (<i>See</i> section I(A), Objections [Dkt. 115]).
46	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
47	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.
49	FRE 801, 802, 901. This exhibit is hearsay as it is an out of court statement by Keating offered for the truth of the matter asserted. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it.

B. Declaration of Dr. David W. Eggleston

Exhibit	Objection
66	FRE 801, 802. The attached expert report is not signed under penalty of perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts in this circuit have routinely held that . . . unsworn expert reports are not admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v. Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment.”).
67	FRE 801, 802. The attached expert report is not signed under penalty of

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	perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts in this circuit have routinely held that . . . unsworn expert reports are not admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v. Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment.”).
79	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s advertisements. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
80	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
81	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
82	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
83	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
84	FRE 901. Dr. Eggleston does not testify that he has personal knowledge of the contents of Glidewell’s website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
93	FRE 401, 402, 403, 802, 901. This document has no tendency to show

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	<p>how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Full-Z.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
94	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
96	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>

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	<p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Zir-cast.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
99	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Zir-Max.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
100	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>

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	<p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
101	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Diazir.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
102	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>

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	This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).
103	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZirFit.”</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
104	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>

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105	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
106	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statement offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
108	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i></p>

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	section I(A) (foundation), Objections [Dkt. 115]).
109	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZerisBRUX.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
110	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
111	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
112	FRE 401, 402, 403, 802, 901. This document has no tendency to show

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	<p>how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that the term “bruxing” is not used as a mark, and that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “bruxing.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
113	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
114	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further, this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “BruxArt.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i></p>

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	section I(A) (foundation), Objections [Dkt. 115]).
117	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
119	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). Further objection on the basis that Keating, in its Response to Glidewell’s SUF 50 in Keating’s Statement of Genuine Disputes of Material Fact in Support of Keating’s Opposition to Glidewell’s Motion for Partial Summary Judgment re Infringement uses this exhibit to show “bruxer” as an example of a mark that sounds similar to BruxZir (“Beyond this, there are more than five marks used in the U.S. that sound similar to BruxZir.”) Keating also cites this exhibit in support of its Response to Glidewell’s SUF 18 in Keating’s Statement of Genuine Disputes of Material Fact in Support of Keating’s Opposition to Glidewell’s Motion for Partial Summary Judgment As to Keating’s Invalidity Defense for the proposition that “Bruxer” is used in the dental industry to refer to crowns. “Bruxer” cannot both, on the one hand, refer to a mark and, on the other, refer to a generic term.</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of</p>

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	<p>the term “bruxer.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
120	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
121	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that the term “bruxing” is not used as a mark in this website, and this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “bruxing.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
122	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>

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	<p>Further objection on the basis this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Brux Checker.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
123	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “Dr. Brux.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
124	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “brux-eze.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>

Exhibit	Objection
125	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that the term “BruxCare” is not used as a mark, and this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “BruxCare.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
126	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “BRUXGUARD.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
127	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show</p>

Exhibit	Objection
	<p>how the term is pronounced, as it does not indicate the pronunciation of the term “Zir-Cut.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
128	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website does not establish the term’s use as a mark, and has no tendency to show how the term is pronounced, as it does it indicate the pronunciation of the term “ZirBlock.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
129	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “IPS e.max ZirCAD.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>

Exhibit	Objection
130	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “IPS e.max ZirPress.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
131	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “IPS e.max Ceram ZirLiner Kit.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
132	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website does not indicate that “Zirprime” is used as a mark, and that the website has no tendency to</p>

Exhibit	Objection
	<p>show how the term is pronounced, as it does it indicate the pronunciation of the term “Zirprime.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
133	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZIR.CARE.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
134	<p>FRE 401, 402, 403, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website has no tendency to show how the term is pronounced, as it does not indicate the pronunciation of the term “ZiReal.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
135	FRE 401, 402, 403, 901. This document has no tendency to show how

Exhibit	Objection
	<p>the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this website does not indicate the pronunciation of the term “ZirColor.”</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p>
136	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is an out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>
137	<p>FRE 401, 402, 403, 802, 901. This document has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p>

Exhibit	Objection
	<p>This exhibit is hearsay because it is an out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity, because Dr. Eggleston does not testify that he has personal knowledge of the contents of the mentioned website. (<i>See</i> section I(A) (foundation), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>

C. Declaration of Rustin K. Magnum

Exhibit	Objection
50	<p>This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>
51	<p>This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any</p>

Exhibit	Objection
	uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
52	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
53	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
54	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to.

Exhibit	Objection
	Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
55	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1). Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
56	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1). Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
57	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1). Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
58	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit.

Exhibit	Objection
	(See SOF 57, Doc No. 88-1). Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
59	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (See section I(A), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>
60	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (See section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (See section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he</p>

Exhibit	Objection
	<p>has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>Further objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).</p>
61	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), Objections [Dkt. 115]).</p>
62	<p>FRE 401, 402, 403, 802, 901. This exhibit is irrelevant and unduly prejudicial. It has no tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B), Objections [Dkt. 115]).</p> <p>This exhibit is hearsay because it is a compilation of out of court statements offered for the truth of the matter asserted. (<i>See</i> section I(A), Objections [Dkt. 115]).</p> <p>This exhibit lacks authenticity because Mangum does not testify that he has personal knowledge of the contents of alleged documents. (<i>See</i> section I(A), Objections [Dkt. 115]).</p>

Exhibit	Objection
63	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1).
64	FRE 901. This exhibit has not been authenticated by any declaration, nor does the deposition testimony cited by Keating authenticate the exhibit. (See SOF 57, Doc No. 88-1).

D. Declaration of Jeffrey Van Hoosear

Exhibit	Objection
V-1	Objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
V-2	Objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
V-3	Objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
V-4	FRE 401, 402. This document is offered to show that “bruxer” and “BruxZir” are pronounced the same (SOF 48), but in Exhibit V-4 Dr. DiTolla never pronounces the word “bruxer,” and thus the video is irrelevant for purposes of comparison. Further objection on the basis that this exhibit was untimely served, as it was served by messenger on

Exhibit	Objection
	November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).
V-5	Objection on the basis that this exhibit was untimely served, as it was served by messenger on November 20, 2012. L.R. 6-1 (evidence in support of moving brief served later than 28 days prior to motion hearing).

E. Declaration of Lori Boatright

Exhibit	Objection
A	FRE 801, 802. The attached expert report is not signed under penalty of perjury. Accordingly, it is inadmissible hearsay. <i>Harris v. Extendicare Homes, Inc.</i> , 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (“[C]ourts in this circuit have routinely held that . . . unsworn expert reports are not admissible to support or oppose summary judgment.”); <i>King Tuna, Inc. v. Anova Food, Inc.</i> , 2009 WL 650732 (C.D. Cal. 2009) (“It is well-settled that under Fed.R.Civ.P. 56(e), unsworn expert reports are not admissible to support or oppose summary judgment.”).

F. Objections to Declaration of Carol Frattura

Paragraph	Objection
8	FRE 401, 402, 403, 702. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when she regarded “bruxzir,” “bruxer,” or “bruxir” as meaning an “all-zirconia crown,” and at most indicates

	<p>a time reference as of the date of the prescription forms attached to her declaration as Exhibit A, which either post-date April 2011 (KDA-004853-61, KDA 004863, KDA-004868, and KDA-004870), are undated (KDA-004869), or show that dentists use terms other than “bruxzir” or “bruxer” (KDA-004862 (May 2011)(“Brux Zirconia”), KDA-004864 (October 2010) (“Full Ceram Crown”), KDA-004865 (March 2011) (“zinostar”), KDA-004866 (October 2010) (“BRUX zirconia”), KDA-004867 (September 2010) (“zirconia crown”).</p> <p>Further, the witness’s statement of what dentists could have been referring to when using the term “bruxer” is speculative.</p>
18	<p>FRE 401, 402, 403, 702. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to the time period following January 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness is also speculating as what others dentists mean when using the terms “bruxzir crown” and “bruxer crown.”</p>
Exhibit	
<p>Portions of Ex. A: KDA- 004853-61, KDA 004863, KDA- 004868,</p>	<p>FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).</p> <p>The prescription forms in Exhibit A either post-date April 2011 (KDA-004853-61, KDA 004863, KDA-004868, and KDA-004870), or are undated (KDA-004869).</p> <p>The attached documents are also inadmissible hearsay. FRE 801,</p>

1 2 3 4 5	KDA- 004869, and KDA- 004870,	802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).
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7 **G. Declaration of Dr. William Belton**

8	Paragraph	Objection
9 10 11 12 13 14 15 16	9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded "BruxZir" as meaning an "all zirconia crown, commonly used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011, March 2012, and May 2012.
17 18 19 20 21 22	10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in November 2011, March 2012, and May 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
23	Exhibit	
24 25 26 27 28	A	FRE 401, 402, 403, 802. The attached documents do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded "BruxZir" as meaning

an “all zirconia crown, commonly used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011, March 2012, and May 2012.

The attached documents are also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

H. Declaration of Dr. Raymond Brady

Paragraph	Objection
9	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “Bruxir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated July 2012.
10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in July 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
Exhibit	
A	FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).

The witness fails to specify when he regarded “Bruxir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated July 2012.

The attached document is also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

I. Declaration of Dr. Jonathan Campbell

Paragraph	Objection
10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxzir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated October 2011.
11	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in October 2011. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
12	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he began using the term “bruxzir”

	to “specify the type of crown [he] wanted for a patient and to distinguish from other types of crowns such as PFMs and full cast gold crowns.”
Exhibit	
A	<p>FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxzir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated October 2011.</p> <p>The attached document is also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i>, 285 F.3d 764, 778 (9th Cir. 2002).</p>

J. Declaration of Dr. Michael Colleran

Paragraph	Objection
10	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxzir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.</p>
11	<p>FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by</p>

1		the public as of April 2011, the critical date for determining
2		genericness, but refer to conduct in August 2012. (<i>See</i> section I(B)
3		(relevance), Objections [Dkt. 115]).
4	12	FRE 401, 402, 403, 702. The witness's statements do not have any
5		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
6		the public as of April 2011, the critical date for determining
7		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
8		The witness fails to specify when "he has seen the term 'bruxzir'
9		with various spellings," how he knows the use of the term "bruxir"
10		was used "to refer to an all zirconia crown," or how he knows "they
11		are all pronounced the same."
12	Exhibit	
13	A	FRE 401, 402, 403, 802. The attached document does not have any
14		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
15		the public as of April 2011, the critical date for determining
16		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
17		The witness fails to specify when he regarded "bruxzir" as meaning a
18		"full contour zirconia crown for bruxers," and at most indicates a
19		time reference as of the date of the prescription form attached to his
20		declaration as Exhibit A, dated August 2012.
21		The attached document is also inadmissible hearsay. FRE 801, 802;
22		<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

K. Declaration of Dr. Joseph Jacquinot

Paragraph	Objection
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by

1		the public as of April 2011, the critical date for determining
2		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
3		The witness fails to specify when he regarded “brux-zir” as meaning
4		an “all zirconia crown which is often used for bruxers,” and at most
5		indicates a time reference as of the date of the prescription forms
6		attached to his declaration as Exhibit A, dated October 2011.
7	10	FRE 401, 402, 403. The witness’s statements do not have any
8		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
9		the public as of April 2011, the critical date for determining
10		genericness, but refer to conduct in October 2011. (<i>See</i> section I(B)
11		(relevance), Objections [Dkt. 115]).
12	11	FRE 401, 402, 403, 702. The witness’s statements do not have any
13		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
14		the public as of April 2011, the critical date for determining
15		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
16		The witness fails to specify when he began to use “‘brux-zir’ to
17		specify [an all zirconia crown]” or when or how he has “heard and
18		pronounced ‘bruxzir’ the same way as ‘bruxer.’”
19	Exhibit	
20	A	FRE 401, 402, 403, 802. The attached documents do not have any
21		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
22		the public as of April 2011, the critical date for determining
23		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
24		The witness fails to specify when he regarded “brux-zir” as meaning
25		an “all zirconia crown which is often used for bruxers,” and at most
26		indicates a time reference as of the date of the prescription forms
27		attached to his declaration as Exhibit A, dated October 2011.
28		

The attached documents are also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

L. Declaration of Dr. Dennis Murphy

Paragraph	Objection
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded "bruxzir" and "bruxir" as meaning an "all zirconia crown which is often used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.
10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in November 2011 and May 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
11	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he has seen "advertisements for all zirconia crowns that use the term "bruxzir," or a similar spelling, to identify [an all zirconia] crown." At most, the witness refers to his understanding as of November 2011 and May 2012 "when [he]

1		submitted the orders attached in Exhibit A.”
2	Exhibit	
3	A	FRE 401, 402, 403, 802. The attached documents do not have any
4		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
5		the public as of April 2011, the critical date for determining
6		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
7		The witness fails to specify when he regarded “bruxzir” and “bruxir”
8		as meaning an “all zirconia crown which is often used for bruxers,”
9		and at most indicates a time reference as of the date of the
10		prescription forms attached to his declaration as Exhibit A, dated
11		November 2011 and May 2012.
12		The attached documents are also inadmissible hearsay. FRE 801,
13		802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

M. Declaration of Dr. Terry Myers

16	Paragraph	Objection
17	8	FRE 401, 402, 403. The witness’s statements do not have any
18		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
19		the public as of April 2011, the critical date for determining
20		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
21		The witness fails to specify when he regarded “bruxzir” as meaning a
22		“full contour zirconia crown for bruxers,” and at most indicates a
23		time reference as of the date of the prescription form attached to his
24		declaration as Exhibit B, dated November 2011.
25	9	FRE 401, 402, 403. The witness’s statements do not have any
26		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
27		the public as of April 2011, the critical date for determining
28		

	genericness, but refer to conduct in November 2011. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
10	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he has seen advertisements for a "bruxzir" crown or which dental laboratories were providing these advertisements. The witness also fails to identify when he understood the term "bruxzir" crown to mean "a full contour zirconia crown."
Exhibit	
B	FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded "bruxzir" as meaning a "full contour zirconia crown for bruxers," and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit B, dated November 2011. The attached document is also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

N. Declaration of Dr. Thomas Nussear

Paragraph	Objection
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by

1		the public as of April 2011, the critical date for determining
2		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
3		The witness fails to specify when he regarded “bruxzir” as meaning a
4		“full contour zirconia crown for bruxers,” and at most indicates a
5		time reference as of the date of the prescription form attached to his
6		declaration as Exhibit A, dated May 2011.
7	10	FRE 401, 402, 403. The witness’s statements do not have any
8		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
9		the public as of April 2011, the critical date for determining
10		genericness, but refer to conduct in May 2011. (<i>See</i> section I(B)
11		(relevance), Objections [Dkt. 115]).
12	11	FRE 401, 402, 403, 702. The witness’s statements do not have any
13		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
14		the public as of April 2011, the critical date for determining
15		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
16		The witness fails to specify when he “came to understand the terms
17		‘bruxzir’ and ‘bruxer’ to be synonymous” or that “each is
18		pronounced the same” or that “both terms are commonly used to
19		refer to all zirconia crowns which are commonly used for bruxers.”
20	Exhibit	
21	A	FRE 401, 402, 403, 802. The attached document does not have any
22		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
23		the public as of April 2011, the critical date for determining
24		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
25		The witness fails to specify when he regarded “bruxzir” as meaning a
26		“full contour zirconia crown for bruxers,” and at most indicates a
27		time reference as of the date of the prescription form attached to his
28		

declaration as Exhibit A, dated May 2011.

The attached document is also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

O. Declaration of Dr. Stan Richardson

Paragraph	Objection
10	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded "bruxzir" and "bruxzer" as meaning an "all zirconia crown which is commonly used for bruxers," and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.
11	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in November 2011 and May 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
12	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but again refer to conduct in November 2011 and May 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
Exhibit	
A	FRE 401, 402, 403, 802. The attached documents do not have any

tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (*See* section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxzir” and “bruxzer” as meaning an “all zirconia crown which is commonly used for bruxers,” and at most indicates a time reference as of the date of the prescription forms attached to his declaration as Exhibit A, dated November 2011 and May 2012.

The attached documents are also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

P. Declaration of Dr. Richard Scott

Paragraph	Objection
9	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.
10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in August 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
11	FRE 401, 402, 403, 702. The witness’s statements do not have any

	tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he came to the understanding that “bruxer” crown, “bruxzir” crown, and “bruxir” crown all carry the same meaning and that they are pronounced the same.
Exhibit	
A	FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “bruxir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012. The attached document is also inadmissible hearsay. FRE 801, 802; <i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

Q. Declaration of Dr. Scott Stephens

Paragraph	Objection
10	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “brux-zir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his

1		declaration as Exhibit A, dated October 2011.
2	11	FRE 401, 402, 403. The witness's statements do not have any
3		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
4		the public as of April 2011, the critical date for determining
5		genericness, but refer to conduct in October 2011. (<i>See</i> section I(B)
6		(relevance), Objections [Dkt. 115]).
7	12	FRE 401, 402, 403, 702. The witness's statements do not have any
8		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
9		the public as of April 2011, the critical date for determining
10		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
11		The witness fails to specify when he understood "bruxzir" as a
12		reference to a crown used for bruxism patients made of zirconia. The
13		witness also does not indicate when or how he knows that when he
14		hears the term "bruxzir" pronounced, it is the same as "bruxer."
15	Exhibit	
16	A	FRE 401, 402, 403, 802. The attached document does not have any
17		tendency to show how the terms "Bruxer" or "Bruxzir" were used by
18		the public as of April 2011, the critical date for determining
19		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
20		The witness fails to specify when he regarded "brux-zir" as meaning
21		a "full contour zirconia crown for bruxers," and at most indicates a
22		time reference as of the date of the prescription form attached to his
23		declaration as Exhibit A, dated October 2011.
24		The attached document is also inadmissible hearsay. FRE 801, 802;
25		<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).
26		
27		
28		

R. Declaration of Dr. Daniel Sweet

Paragraph	Objection
8	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded "brux-zir" as meaning a "full contour zirconia crown for bruxers," and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.
9	FRE 401, 402, 403. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in August 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
10	FRE 401, 402, 403, 702. The witness's statements do not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he understood "bruxzir" as a reference to a crown used for bruxism patients made of zirconia. The witness also does not indicate when or how he knows that when he hears the term "bruxzir" pronounced, it is the same as "bruxer."
Exhibit	
A	FRE 401, 402, 403, 802. The attached document does not have any tendency to show how the terms "Bruxer" or "Bruxzir" were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).

The witness fails to specify when he regarded “brux-zir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated August 2012.

The attached document is also inadmissible hearsay. FRE 801, 802; *Orr v. Bank of America*, 285 F.3d 764, 778 (9th Cir. 2002).

S. Declaration of Dr. Gary P. Tobin

Paragraph	Objection
8	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he regarded “brux-zir” as meaning a “full contour zirconia crown for bruxers,” and at most indicates a time reference as of the date of the prescription form attached to his declaration as Exhibit A, dated October 2012.
9	FRE 401, 402, 403. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness, but refer to conduct in October 2012. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
10	FRE 401, 402, 403, 702. The witness’s statements do not have any tendency to show how the terms “Bruxer” or “Bruxzir” were used by the public as of April 2011, the critical date for determining genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]). The witness fails to specify when he understood “bruxzir” as a

1		reference to a crown used for bruxism patients made of zirconia. The
2		witness also does not indicate when or how he knows that when he
3		hears the term “bruxzir” pronounced, it is the same as “bruxer.”
4	11	FRE 401, 402, 403, 702. The witness’s statements do not have any
5		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
6		the public as of April 2011, the critical date for determining
7		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
8		The witness fails to specify when he understood “bruxzir” as a
9		reference to a crown used for bruxism patients made of zirconia. The
10		witness also does not indicate when or how he knows that when he
11		hears the term “bruxzir” pronounced, it is the same as “bruxer.”
12	Exhibit	
13	A	FRE 401, 402, 403, 802. The attached document does not have any
14		tendency to show how the terms “Bruxer” or “Bruxzir” were used by
15		the public as of April 2011, the critical date for determining
16		genericness. (<i>See</i> section I(B) (relevance), Objections [Dkt. 115]).
17		The witness fails to specify when he regarded “brux-zir” as meaning
18		a “full contour zirconia crown for bruxers,” and at most indicates a
19		time reference as of the date of the prescription form attached to his
20		declaration as Exhibit A, dated October 2011.
21		The attached document is also inadmissible hearsay. FRE 801, 802;
22		<i>Orr v. Bank of America</i> , 285 F.3d 764, 778 (9th Cir. 2002).

T. Declaration of Robert Brandon

Paragraph	Objection
5	FRE 801, 802. The out of court statements of dentists are offered for the truth of the matter asserted and do not fall within an exception.

9

FRE 401, 402, 403. With respect to SGI 6 and 7 (Dkt. 126), the witness's statements do not have any tendency to show how that the orders for "KDZ Bruxer" ceased once the dentists learned that Keating was defending a lawsuit. The orders could have stopped for any number of reasons, including that the dentist intended to order Glidewell's BruxZir product.

10

FRE 401, 402, 403. With respect to SGI 6 and 7 (Dkt. 126), the witness's statements do not have any tendency to show how that the orders for "KDZ Bruxer" ceased once the dentists learned that Keating was defending a lawsuit. The orders could have stopped for any number of reasons, including that the dentist intended to order Glidewell's BruxZir product.

U. Declaration of Diane Mallos Donich

Paragraph	Objection
3	FRE 401, 402, 403. The witness's statements do not have any tendency to show a correlation between the initiation of the lawsuit and the product sales; instead the witness's testimony tends to support correlation between the product sales and the advertising of the product, which Keating voluntarily decreased. Further objection for relevance on the basis that Keating could have decreased its advertising for any number of reasons.
4	FRE 401, 402, 403. The witness's statements do not have any tendency to show a correlation between the initiation of the lawsuit and the product sales; instead the witness's testimony tends to show a correlation between the product sales and the advertising of the product, which Keating voluntarily decreased. Exhibit A further

	shows that the product sales did not stagnate and decline, on the contrary, the sales in May 2012 and subsequent are equal to greater than sales of any month prior to December 2011.
Exhibit	
A	FRE 401, 402, 403. The attached document does not have any tendency to support the witness's statements, as it does not contain marketing and advertising figures. Further, Exhibit A further shows that the product sales did not stagnate and decline, on the contrary, the sales in May 2012 and subsequent are equal to greater than sales of any month prior to December 2011.

V. Declaration of David Jankowski iso Keating's Oppositions to Glidewell's Motions for Summary Judgment (Dkt. No. 125)

Exhibit	Objection
138	FRE 901. This exhibit has not been authenticated by any declaration, nor has Keating cited any deposition testimony to authenticate it. It also is not bates-stamped by either party.
153	This exhibit is a full deposition transcript, most of which Keating does not cite in its papers. Glidewell has not reviewed the entire transcript to determine what is admissible and what is not, nor is it obligated to. Instead, Glidewell hereby reserves its right to raise objections to any uncited portions of the transcript Keating may later rely on. Further objection on the ground that the deposition transcript is not properly authenticated. No signature page is attached and the copy of the transcript is not a certified copy.
155	FRE 401, 402, 403. With respect to Keating's Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that "The usages of the ® symbol in Exhibits 70-72 were inadvertent...."

Exhibit	Objection
	<p>because there were additional examples from Glidewell’s website. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. Further, this exhibit does not support Keating’s assertion that “There were multiple email blasts which Glidewell sent to over 100,000 dentists” as this exhibit is a website printout. With respect to Keating’s Response to SUF 15 (Dkt. 126), Keating proffers this exhibit as evidence that “two instances identified on Glidewell’s website were corrected within one day of my becoming aware of them” is disputed because more than two instances were identified on Glidewell’s website. However, the two instances referenced were those of Exhibits 70-72, not of Exhibits 155-158. Thus, Exhibits 155-158 are not probative of whether the instances within Exhibits 70-72 were corrected within a day of becoming aware of them. Further, Exhibits 155-158 all appear to have been printed on the same day, October 22, 2012, and are not probative of whether the website was corrected within one day of October 22, 2012. With respect to Keating’s Response to SUF 19 (Dkt. 126), this exhibit is a single website page, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 1 (Dkt. 126), this exhibit is one of three examples given; this evidence does not establish that Glidewell “widely used” the ® symbol.</p>
156	<p>FRE 401, 402, 403. With respect to Keating’s Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that “The usages of the ® symbol in Exhibits 70-72 were inadvertent....” because there were additional examples from Glidewell’s website. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. Further, this exhibit does not support Keating’s assertion</p>

Exhibit	Objection
	<p>that “There were multiple email blasts which Glidewell sent to over 100,000 dentists” as this exhibit is a website printout. With respect to Keating’s Response to SUF 15 (Dkt. 126), Keating proffers this exhibit as evidence that “two instances identified on Glidewell’s website were corrected within one day of my becoming aware of them” is disputed because more than two instances were identified on Glidewell’s website. However, the two instances referenced were those of Exhibits 70-72, not of Exhibits 155-158. Thus, Exhibits 155-158 are not probative of whether the instances within Exhibits 70-72 were corrected within a day of becoming aware of them. Further, Exhibits 155-158 all appear to have been printed on the same day, October 22, 2012, and are not probative of whether the website was corrected within one day of October 22, 2012. With respect to Keating’s Response to SUF 19 (Dkt. 126), this exhibit is a single website page, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 1 (Dkt. 126), this exhibit is one of three examples given; this evidence does not establish that Glidewell “widely used” the ® symbol.</p>
157	<p>FRE 401, 402, 403. With respect to Keating’s Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that “The usages of the ® symbol in Exhibits 70-72 were inadvertent....” because there were additional examples from Glidewell’s website. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. Further, this exhibit does not support Keating’s assertion that “There were multiple email blasts which Glidewell sent to over 100,000 dentists” as this exhibit is a website printout. With respect to Keating’s Response to SUF 15 (Dkt. 126), Keating proffers this exhibit as</p>

Exhibit	Objection
	<p>evidence that “two instances identified on Glidewell’s website were corrected within one day of my becoming aware of them” is disputed because more than two instances were identified on Glidewell’s website. However, the two instances referenced were those of Exhibits 70-72, not of Exhibits 155-158. Thus, Exhibits 155-158 are not probative of whether the instances within Exhibits 70-72 were corrected within a day of becoming aware of them. Further, Exhibits 155-158 all appear to have been printed on the same day, October 22, 2012, and are not probative of whether the website was corrected within one day of October 22, 2012. With respect to Keating’s Response to SUF 19 (Dkt. 126), this exhibit is a single website page, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 1 (Dkt. 126), this exhibit is one of three examples given; this evidence does not establish that Glidewell “widely used” the ® symbol.</p>
158	<p>FRE 401, 402, 403. With respect to Keating’s Response to SUF 14 (Dkt. 126), Keating proffers this exhibit as evidence contrary to the fact that “The usages of the ® symbol in Exhibits 70-72 were inadvertent....” because there were additional examples from Glidewell’s website. This evidence is not probative that the instances in Exhibits 70-72 were not inadvertent. Further, this exhibit does not support Keating’s assertion that “There were multiple email blasts which Glidewell sent to over 100,000 dentists” as this exhibit is a website printout. With respect to Keating’s Response to SUF 15 (Dkt. 126), Keating proffers this exhibit as evidence that “two instances identified on Glidewell’s website were corrected within one day of my becoming aware of them” is disputed because more than two instances were identified on Glidewell’s website.</p>

Exhibit	Objection
	<p>However, the two instances referenced were those of Exhibits 70-72, not of Exhibits 155-158. Thus, Exhibits 155-158 are not probative of whether the instances within Exhibits 70-72 were corrected within a day of becoming aware of them. Further, Exhibits 155-158 all appear to have been printed on the same day, October 22, 2012, and are not probative of whether the website was corrected within one day of October 22, 2012.</p> <p>With respect to Keating's Response to SUF 19 (Dkt. 126), this exhibit is a single website page, and is not probative of greater misuse of ® beyond a handful of inadvertent uses. With respect to SGI 1 (Dkt. 126), this exhibit is one of three examples given; this evidence does not establish that Glidewell "widely used" the ® symbol.</p>

W. Declaration of Shaun Keating

Paragraph	Objection
11	<p>FRE 401, 402, 403. The witness's statements do not have any tendency to show the of the term "KDZ" and the term "Bruxer" in advertisements including the term "KDZ Bruxer," such that the relative prominence of the term "KDZ" and the term "Bruxer" can be established.</p>

Dated: December 3, 2012

SNELL & WILMER L.L.P.

By: s/Philip J. GravesPhilip J. Graves
Greer N. ShawAttorneys for Plaintiff
James R. Glidewell Dental Ceramics, Inc. dba
Glidewell Laboratories

1 ***Glidewell Laboratories v. Keating Dental Arts, Inc.***
2 **United States District Court, Central, Case No. SACV11-01309-DOC (ANx)**

3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on December 3, 2012, I electronically filed the document
5 described as **JAMES R. GLIDEWELL DENTAL CERAMICS, INC.'S**
6 **STATEMENT OF OBJECTIONS TO EVIDENCE SUBMITTED IN**
7 **SUPPORT OF KEATING'S MOTIONS FOR SUMMARY JUDGMENT** with
8 the Clerk of the Court using the CM/ECF System which will send notification of
9 such filing to the following:

10 David G. Jankowski
11 Jeffrey L. Van Hoosear
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16 Dated: December 3, 2012

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Certificate of Service
SACV11-01309-DOC (ANx)

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